

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

ALAN H. SMITH,

Plaintiff,

v.

CIV No. 13-435 MCA/GBW

ALLEN BATTS, et al.

Defendants.

ORDER GRANTING
PLAINTIFF'S MOTION FOR LEAVE TO AMEND

THIS MATTER comes before the Court on Plaintiff's Motion to Leave to File an Amended Complaint. *Doc. 78*. As Defendants have failed to oppose the motion and the Court sees no basis on which to deny it, it will be granted.

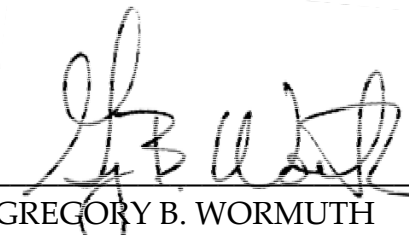
Plaintiff filed his complaint on May 8, 2013. *Doc. 1*. On October 10, 2013, Defendant Ray Powell filed his motion to dismiss, which the Court granted on January 15, 2014. *Docs. 55, 81*. During the pendency of the motion, Plaintiff filed an opposed motion for leave to file an amended complaint. *Doc. 78*. Defendants failed to file a response to this motion within the appointed time limits, and in fact have never filed a response to Plaintiff's motion.

Under Rule 15, "a party may amend its pleading *once* as a matter of course" under two specified circumstances. Fed. R. Civ. P. 15(a)(1) (emphasis added). A party may do so "21 days after serving" the pleading. *Id.* 15(a)(1)(A). Additionally, a party

may do so, "if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier." *Id.* 15(a)(1)(B). "In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave where justice so requires." *Id.* 15(a)(2).

Given the timing of Plaintiff's Motion, his request is governed by Rule 15(a)(2). Having reviewed the proposed amended complaint provided by Plaintiff, the Court finds no basis on which to deny leave to amend. Further, Defendants have failed to oppose Plaintiff's Motion, which constitutes consent to Plaintiff's Motion under D.N.M.LR-Civ. 7.1(b).

Wherefore, **IT IS HEREBY ORDERED** that Plaintiff's Motion is GRANTED. Plaintiff may file the amended pleading attached to his motion as Exhibit A.



GREGORY B. WORMUTH
UNITED STATES MAGISTRATE JUDGE